

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MONADNOCK CONSTRUCTION, INC.,

Plaintiff,

Case No.: 16 CIV. 00420
(JBW)(VMS) ECFCase

-against-

WESTCHESTER FIRE
INSURANCE COMPANY,

Defendant.

_____)
WESTCHESTER FIRE
INSURANCE COMPANY,

Third-Party Plaintiff,

-against-

GLASSWALL, LLC, UGO COLOMBO, and
SARA JAYNE KENNEDY COLOMBO,

Third-Party Defendants.

_____)
**DECLARATION OF JOEL S. MAGOLNICK IN
SUPPORT OF MOTION TO DISMISS THIRD-PARTY
COMPLAINT**

JOEL S. MAGOLNICK declares under penalty of perjury pursuant 28 U.S.C. §1746:

1. I am a member of Marko & Magolnick, P.A. and have been admitted *pro hac vice* as counsel for third-party defendants Ugo Colombo and Sara Jayne Kennedy Colombo. I have knowledge of the facts set forth herein and submit this declaration in support of the motion by the third-party defendants to dismiss this action under the doctrine of abstention in view of the

pending Florida State Court actions commenced by my clients against third-party plaintiff Westchester Fire Insurance Company (“Westchester”).

2. Attached hereto as Exhibit “A” is a copy of the third-party complaint filed by Westchester on September 12, 2017. Westchester seeks to hold the third-party defendants liable under an agreement of indemnity in connection with two performance bonds issued by Westchester in connection with third-party defendant Glasswall, LLC's (“Glasswall”) manufacturing of windows for a housing project constructed by plaintiff Monadnock Construction, Inc. (“Monadnock”).

3. On behalf of my clients I filed two complaints in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County (the “Florida State Court”) relating to my clients’ alleged obligations as indemnitors of Westchester. Specifically, on or about January 28, 2014, I filed an amended complaint on behalf of third-party defendant Sara Jayne Kennedy Colombo seeking declaratory relief. A copy of the Amended Complaint is attached hereto as Exhibit “B”. Specifically, the Amended Complaint alleges that Monadnock terminated its agreements with Glasswall wrongfully and in bad faith, so that its demand against Westchester under the bonds was improper. As such, Ms. Kennedy Colombo requested a declaratory judgment that any liability she may have had under the bonds was fully and completely discharged as a result of Monadnock's wrongful conduct.

4. Additionally, on or about February 28, 2014, I filed a complaint in the same Court on behalf of Ugo Colombo, a copy of which is attached hereto as Exhibit “C” (with exhibits omitted), seeking similar relief to that sought by Ms. Kennedy Colombo. The complaint on behalf of Ugo Colombo also sought injunctive relief as to Westchester, alleging, at paragraph 43, that “Westchester's obligations under the Bonds arise if there is no default by Monadnock.”

5. An arbitration was conducted between Monadnock and Glasswall, and, on August 29,

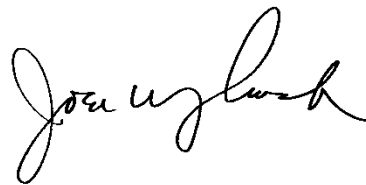
2017, after nine days of hearings, the Arbitration Panel issued an Award. A copy of the Award is attached hereto as Exhibit "D". In the Award, at page 10, the Panel specifically found that Monadnock was in breach of the agreements with Glasswall:

We find that Monadnock wrongfully refused to accept delivery of the windows, including ancillary materials needed for their installation in the Fall and Winter of 2013- 2014 in breach of the Subcontracts.

6. As the arbitrators found that Monadnock was in breach, and therefore in default, the allegations in Ugo Colombo's declaratory relief claim in the Florida State Court action have now been established. As such, the Florida Court should, as requested, determine the parties' rights and obligations under the bonds.

7. For the reasons explained above and in the accompanying Memorandum of Law, it is respectfully requested that the motion by third-party defendants Ugo Colombo and Sara Jayne Kennedy Colombo that this Court abstain from proceeding, pending disposition of the Florida State Court actions, be granted.

Executed this 29th day of November, 2017 at Miami, Florida.

A handwritten signature in black ink, appearing to read "Joel S. Magolnick", written in a cursive style.

Joel S. Magolnick